

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 6067 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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JAMANBHAI KANJIBHAI SAVALIYA - Petitioner(s)

Versus

SHETH VADILAL SARABHAI HOSPITAL & 2 - Respondent(s)

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Appearance :

GIRISH PATEL ASSOC for Petitioner(s) : 1,

MR HS MUNSHAW for Respondent(s) : 1 - 2.

MS BHAVIKA KOTECHEA, ASST GOVT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 16/08/2007

ORAL JUDGMENT

1. Heard learned counsel for the parties.

2. The petitioner has challenged the action of oral

termination by the respondent hospital on 15.04.99 putting an end to his services as part-time Physiotherapist with the respondent hospital.

3. It is the say of the petitioner that the petitioner was infact working as part-time Physiotherapist from 24.04.97 to 15.04.99 and thereafter on 15.04.99 his services were terminated orally. The petitioner submits that he has undergone course in the Vocational Educational Career Courses, Gujarat State Examination Board and a certificate is issued indicating that he has passed Physiotherapy certificate examination held in April 1995. During the pendency of this petition, the petitioner has also obtained Diploma in Physiotherapy for the blinds issued by Dr. Babasaheb Ambedkar Open University which is placed on record and therefore his services ought not to have been terminated.

4. An affidavit in reply is filed on behalf for the respondent indicating that there were two part-time posts of Physiotherapists and actually both the posts were manned by blind Physiotherapists namely Shri Dinkar Acharya and Shri Natwarlal Patel. These part-time Physiotherapists were recruited after following due procedure of law. In the meantime, the petitioner gave an application on 17.03.97 to provide him work as Physiotherapist and he was considered and without following the due procedure of inviting application through newspaper advertisement and without calling names from the Employment Exchange the petitioner was engaged as part-time Physiotherapist.

4.1 It was, thereafter, decided by the respondent hospital management to discontinue the part-time post of Physiotherapist or rather convert the same into that of full time Physiotherapist as a Physiotherapy School was opened. Now for manning the post of full-time Physiotherapist in the Physiotherapy School, the qualifications were prescribed and accordingly the recruitment is made on these posts. This fact has not been disputed by the petitioner. The document at page 55 indicates that the school was opened and the same was to be run and conducted as per the standards laid down by the Indian Association of Physiotherapy. These are the facts in brief which have remained undisputed on record.

5. In view of the aforesaid facts and circumstances of the case, when the part-time Physiotherapists were converted into that of full-time Physiotherapists and these Physiotherapists were to undertake the work of school as well as the hospital, the action of the respondent hospital cannot be said to be arbitrary, illegal or in any way unjustified. The fact remains that the petitioner had been appointed only as a stop-gap arrangement and he does not possess any degree in Physiotherapy as it is required for manning the post of Physiotherapist in the School of Physiotherapy run by the respondent hospital. When the post itself is converted the incumbent of the post not fulfilling the qualification criteria of the newly created post has no right to continue or to seek reemployment. Therefore this petition is required to be dismissed.

However, looking to the facts and circumstances of the case and the petitioner's plight as a handicapped person, the respondent hospital may consider the case of the petitioner in case the services of the petitioner are required only for the purpose of assisting qualified Physiotherapists in the Physiotherapy school or hospital.

6. With the aforesaid observation, this petition is hereby dismissed. Rule is discharged.

(S.R.BRAHMBHATT, J.)

Divya//